

AMENDED IN ASSEMBLY MARCH 19, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 168

Introduced by Assembly Member Nava

January 28, 2009

An act to amend Sections 781 and 827 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 168, as amended, Nava. Juvenile case files: sexually violent predator proceedings.

Existing law provides for sentencing enhancements on the basis of prior felony convictions, which are defined to include certain offenses adjudicated before the juvenile court. However, existing law generally provides for the confidentiality of juvenile records, reports, and related information. Those records may be sealed and eventually destroyed, unless the subject of the record was found to be a ward of the court because of the commission of specified felony offenses committed when he or she was 14 years of age or older. Certain persons, including law enforcement personnel who are actively participating in criminal or juvenile proceedings involving a minor, may inspect those records and reports concerning that minor, but those persons may not disseminate the records or reports, or related information, without the prior approval of the presiding judge of the juvenile court, except as specified.

Existing sexually violent predator laws set forth procedures under which a person under the jurisdiction of the Department of Corrections and Rehabilitation may be referred for evaluation at least 6 months prior to the person's scheduled date for release from prison if the director determines that the person may be a sexually violent predator, as

defined. The sexually violent predator laws provide, under certain circumstances, that this person may be required to stand trial, be found beyond a reasonable doubt to be a sexually violent predator, and be committed for an indeterminate term to the custody of the State Department of Mental Health for appropriate treatment and confinement in a secure facility until his or her diagnosed mental disorder has so changed that he or she is not likely to engage in sexually violent criminal behavior if discharged, as specified.

This bill would authorize, in any investigation, action, or proceeding based on the sexually violent predator laws, *a court, upon a showing of good cause, to permit* the Department of Corrections and Rehabilitation, the State Department of Mental Health, and the attorney petitioning for commitment, or their agents, to obtain and use records that have been sealed, *that are relevant to the civil commitment proceeding as determined by the court, in camera, and* pertaining to sustained petitions for specified sexually violent offenses that were committed when the person had attained 14 years of age or older. The bill also would authorize, in any civil commitment proceeding based on the sexually violent predator laws, the court, counsel for the parties, any jury, and any other person authorized by the court, to obtain and use the records.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 781 of the Welfare and Institutions Code
2 is amended to read:
3 781. (a) In any case in which a petition has been filed with a
4 juvenile court to commence proceedings to adjudge a person a
5 ward of the court, in any case in which a person is cited to appear
6 before a probation officer or is taken before a probation officer
7 pursuant to Section 626, or in any case in which a minor is taken
8 before any officer of a law enforcement agency, the person or the
9 county probation officer may, five years or more after the
10 jurisdiction of the juvenile court has terminated as to the person,
11 or, in a case in which no petition is filed, five years or more after
12 the person was cited to appear before a probation officer or was
13 taken before a probation officer pursuant to Section 626 or was
14 taken before any officer of a law enforcement agency, or, in any

1 case, at any time after the person has reached 18 years of age,
2 petition the court for sealing of the records, including records of
3 arrest, relating to the person's case, in the custody of the juvenile
4 court and probation officer and any other agencies, including law
5 enforcement agencies, and public officials as the petitioner alleges,
6 in his or her petition, to have custody of the records. The court
7 shall notify the district attorney of the county and the county
8 probation officer, if he or she is not the petitioner, and the district
9 attorney or probation officer or any of their deputies or any other
10 person having relevant evidence may testify at the hearing on the
11 petition. If, after hearing, the court finds that since the termination
12 of jurisdiction or action pursuant to Section 626, as the case may
13 be, he or she has not been convicted of a felony or of any
14 misdemeanor involving moral turpitude and that rehabilitation has
15 been attained to the satisfaction of the court, it shall order all
16 records, papers, and exhibits in the person's case in the custody
17 of the juvenile court sealed, including the juvenile court record,
18 minute book entries, and entries on dockets, and any other records
19 relating to the case in the custody of the other agencies and officials
20 as are named in the order. In any case in which a ward of the
21 juvenile court is subject to the registration requirements set forth
22 in Section 290 of the Penal Code, a court, in ordering the sealing
23 of the juvenile records of the person, also shall provide in the order
24 that the person is relieved from the registration requirement and
25 for the destruction of all registration information in the custody of
26 the Department of Justice and other agencies and officials.
27 Notwithstanding any other provision of law, the court shall not
28 order the person's records sealed in any case in which the person
29 has been found by the juvenile court to have committed an offense
30 listed in subdivision (b) of Section 707 when he or she had attained
31 14 years of age or older. Once the court has ordered the person's
32 records sealed, the proceedings in the case shall be deemed never
33 to have occurred, and the person may properly reply accordingly
34 to any inquiry about the events, the records of which are ordered
35 sealed. The court shall send a copy of the order to each agency
36 and official named therein, directing the agency to seal its records
37 and stating the date thereafter to destroy the sealed records. Each
38 agency and official shall seal the records in its custody as directed
39 by the order, shall advise the court of its compliance, and thereupon
40 shall seal the copy of the court's order for sealing of records that

1 it, he, or she received. The person who is the subject of records
2 sealed pursuant to this section may petition the superior court to
3 permit inspection of the records by persons named in the petition,
4 and the superior court may so order. Otherwise, except as provided
5 in subdivision (b), the records shall not be open to inspection.

6 (b) (1) In any action or proceeding based upon defamation, a
7 court, upon a showing of good cause, may order any records sealed
8 under this section to be opened and admitted into evidence. The
9 records shall be confidential and shall be available for inspection
10 only by the court, jury, parties, counsel for the parties, and any
11 other person who is authorized by the court to inspect them. Upon
12 the judgment in the action or proceeding becoming final, the court
13 shall order the records sealed.

14 (2) In any investigation, action, or proceeding based on the
15 sexually violent predator laws (Article 4 (commencing with Section
16 6600) of Chapter 2 of Part 2 of Division 6), *a court, upon a*
17 *showing of good cause, may permit* the Department of Corrections
18 and Rehabilitation, the State Department of Mental Health, and
19 the attorney petitioning for commitment, or their agents, ~~may to~~
20 obtain and use records specified in paragraph (3) *relevant to the*
21 *civil commitment proceeding as determined by the court, in*
22 *camera*, that have been sealed pursuant to this section, provided
23 that the subject of the investigation, action or proceeding has been
24 convicted of a sexually violent offense, as defined in subdivision
25 (b) of Section 6600 and in Section 6600.1. In any civil commitment
26 proceeding based on the sexually violent predator laws, the court,
27 counsel for the parties, any jury, and any other person authorized
28 by the court, may obtain and use these records.

29 (3) The records subject to paragraph (2) are limited to those
30 pertaining to sustained petitions for a violation of an offense
31 described in subdivision (b) of Section 6600 on January 1, 2009.

32 (c) (1) Subdivision (a) does not apply to Department of Motor
33 Vehicles records of any convictions for offenses under the Vehicle
34 Code or any local ordinance relating to the operation, stopping
35 and standing, or parking of a vehicle where the record of any such
36 conviction would be a public record under Section 1808 of the
37 Vehicle Code. However, if a court orders a case record containing
38 any such conviction to be sealed under this section, and if the
39 Department of Motor Vehicles maintains a public record of such
40 a conviction, the court shall notify the Department of Motor

1 Vehicles of the sealing and the department shall advise the court
2 of its receipt of the notice.

3 Notwithstanding any other law, subsequent to the notification,
4 the Department of Motor Vehicles shall allow access to its record
5 of convictions only to the subject of the record and to insurers that
6 have been granted requestor code numbers by the department. Any
7 insurer to which a record of conviction is disclosed, when that
8 conviction record has otherwise been sealed under this section,
9 shall be given notice of the sealing when the record is disclosed
10 to the insurer. The insurer may use the information contained in
11 the record for purposes of determining eligibility for insurance
12 and insurance rates for the subject of the record, and the
13 information shall not be used for any other purpose nor shall it be
14 disclosed by an insurer to any person or party not having access
15 to the record.

16 (2) This subdivision shall not be construed as preventing the
17 sealing of any record which is maintained by any agency or party
18 other than the Department of Motor Vehicles.

19 (3) This subdivision shall not be construed as affecting the
20 procedures or authority of the Department of Motor Vehicles for
21 purging department records.

22 (d) Unless for good cause the court determines that the juvenile
23 court record shall be retained, the court shall order the destruction
24 of a person's juvenile court records that are sealed pursuant to this
25 section as follows:

26 (1) Five years after the record was ordered sealed, if the person
27 who is the subject of the record was alleged or adjudged to be a
28 person described by Section 601.

29 (2) When the person who is the subject of the record reaches
30 38 years of age if the person was alleged or adjudged to be a person
31 described by Section 602, except that if the subject of the record
32 was found to be a person described in Section 602 because of the
33 commission of an offense listed in paragraph (2) of subdivision
34 (b) or an offense listed in subdivision (b) of Section 707, when he
35 or she was 14 years of age or older, the record shall not be
36 destroyed.

37 (3) Any other agency in possession of sealed records may
38 destroy its records five years after the record was ordered sealed.

39 (e) This section shall not permit the sealing of a person's
40 juvenile court records for an offense where the person is convicted

1 of that offense in a criminal court pursuant to the provisions of
2 Section 707.1. This subdivision is declaratory of existing law.

3 SEC. 2. Section 827 of the Welfare and Institutions Code is
4 amended to read:

5 827. (a) (1) Except as provided in Section 828, a case file
6 may be inspected only by the following:

7 (A) Court personnel.

8 (B) (i) The district attorney, a city attorney, or city prosecutor
9 authorized to prosecute criminal or juvenile cases under state law.

10 (ii) In any investigation, action, or proceeding based on the
11 sexually violent predator laws (Article 4 (commencing with Section
12 6600) of Chapter 2 of Part 2 of Division 6), if authorized by
13 paragraphs (2) and (3) of subdivision (b) of Section 781, the
14 Department of Corrections and Rehabilitation, the Department of
15 Mental Health, the attorney petitioning for commitment, or their
16 agents.

17 (C) The minor who is the subject of the proceeding.

18 (D) The minor's parents or guardian.

19 (E) The attorneys for the parties, judges, referees, other hearing
20 officers, probation officers, and law enforcement officers who are
21 actively participating in criminal or juvenile proceedings involving
22 the minor.

23 (F) The county counsel, city attorney, or any other attorney
24 representing the petitioning agency in a dependency action.

25 (G) The superintendent or designee of the school district where
26 the minor is enrolled or attending school.

27 (H) Members of the child protective agencies as defined in
28 Section 11165.9 of the Penal Code.

29 (I) The State Department of Social Services, to carry out its
30 duties pursuant to Division 9 (commencing with Section 10000),
31 and Part 5 (commencing with Section 7900) of Division 12, of the
32 Family Code to oversee and monitor county child welfare agencies,
33 children in foster care or receiving foster care assistance, and
34 out-of-state placements, Section 10850.4, and paragraph (2).

35 (J) Authorized legal staff or special investigators who are peace
36 officers who are employed by, or who are authorized
37 representatives of, the State Department of Social Services, as
38 necessary to the performance of their duties to inspect, license,
39 and investigate community care facilities, and to ensure that the
40 standards of care and services provided in those facilities are

adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(K) Members of children's multidisciplinary teams, persons, or agencies providing treatment or supervision of the minor.

(L) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

1 (M) A court-appointed investigator who is actively participating
2 in a guardianship case involving a minor pursuant to Part 2
3 (commencing with Section 1500) of Division 4 of the Probate
4 Code and acting within the scope of his or her duties in that case.

5 (N) A local child support agency for the purpose of establishing
6 paternity and establishing and enforcing child support orders.

7 (O) Juvenile justice commissions as established under Section
8 225. The confidentiality provisions of Section 10850 shall apply
9 to a juvenile justice commission and its members.

10 (P) Any other person who may be designated by court order of
11 the judge of the juvenile court upon filing a petition.

12 (2) (A) Notwithstanding any other law and subject to
13 subparagraph (A) of paragraph (3), juvenile case files, except those
14 relating to matters within the jurisdiction of the court pursuant to
15 Section 601 or 602, that pertain to a deceased child who was within
16 the jurisdiction of the juvenile court pursuant to Section 300, shall
17 be released to the public pursuant to an order by the juvenile court
18 after a petition has been filed and interested parties have been
19 afforded an opportunity to file an objection. Any information
20 relating to another child or which could identify another child,
21 except for information about the deceased, shall be redacted from
22 the juvenile case file prior to release, unless a specific order is
23 made by the juvenile court to the contrary. Except as provided in
24 this paragraph, the presiding judge of the juvenile court may issue
25 an order prohibiting or limiting access to the juvenile case file, or
26 any portion thereof, of a deceased child only upon a showing by
27 a preponderance of evidence that release of the juvenile case file
28 or any portion thereof is detrimental to the safety, protection, or
29 physical or emotional well-being of another child who is directly
30 or indirectly connected to the juvenile case that is the subject of
31 the petition.

32 (B) This paragraph represents a presumption in favor of the
33 release of documents when a child is deceased unless the statutory
34 reasons for confidentiality are shown to exist.

35 (C) If a child whose records are sought has died, and documents
36 are sought pursuant to this paragraph, no weighing or balancing
37 of the interests of those other than a child is permitted.

38 (D) A petition filed under this paragraph shall be served on
39 interested parties by the petitioner, if the petitioner is in possession
40 of their identity and address, and on the custodian of records. Upon

1 receiving a petition, the custodian of records shall serve a copy of
2 the request upon all interested parties that have not been served
3 by the petitioner or on the interested parties served by the petitioner
4 if the custodian of records possesses information, such as a more
5 recent address, indicating that the service by the petitioner may
6 have been ineffective.

7 (E) The custodian of records shall serve the petition within 10
8 calendar days of receipt. If any interested party, including the
9 custodian of records, objects to the petition, the party shall file and
10 serve the objection on the petitioning party no later than 15
11 calendar days of service of the petition.

12 (F) The petitioning party shall have 10 calendar days to file any
13 reply. The juvenile court shall set the matter for hearing no more
14 than 60 calendar days from the date the petition is served on the
15 custodian of records. The court shall render its decision within 30
16 days of the hearing. The matter shall be decided solely upon the
17 basis of the petition and supporting exhibits and declarations, if
18 any, the objection and any supporting exhibits or declarations, if
19 any, and the reply and any supporting declarations or exhibits
20 thereto, and argument at hearing. The court may solely upon its
21 own motion order the appearance of witnesses. If no objection is
22 filed to the petition, the court shall review the petition and issue
23 its decision within 10 calendar days of the final day for filing the
24 objection. Any order of the court shall be immediately reviewable
25 by petition to the appellate court for the issuance of an
26 extraordinary writ.

27 (3) Access to juvenile case files pertaining to matters within the
28 jurisdiction of the juvenile court pursuant to Section 300 shall be
29 limited as follows:

30 (A) If a juvenile case file, or any portion thereof, is privileged
31 or confidential pursuant to any other state law or federal law or
32 regulation, the requirements of that state law or federal law or
33 regulation prohibiting or limiting release of the juvenile case file
34 or any portions thereof shall prevail. Unless a person is listed in
35 subparagraphs (A) to (O), inclusive, of paragraph (1) and is entitled
36 to access under the other state law or federal law or regulation
37 without a court order, all those seeking access, pursuant to other
38 authorization, to portions of, or information relating to the contents
39 of, juvenile case files protected under another state law or federal
40 law or regulation, shall petition the juvenile court. The juvenile

1 court may only release the portion of, or information relating to
2 the contents of, juvenile case files protected by another state law
3 or federal law or regulation if disclosure is not detrimental to the
4 safety, protection, or physical or emotional well-being of a child
5 who is directly or indirectly connected to the juvenile case that is
6 the subject of the petition. This paragraph shall not be construed
7 to limit the ability of the juvenile court to carry out its duties in
8 conducting juvenile court proceedings.

9 (B) Prior to the release of the juvenile case file or any portion
10 thereof, the court shall afford due process, including a notice of
11 and an opportunity to file an objection to the release of the record
12 or report to all interested parties.

13 (4) A juvenile case file, any portion thereof, and information
14 relating to the content of the juvenile case file, may not be
15 disseminated by the receiving agencies to any persons or agencies,
16 other than those persons or agencies authorized to receive
17 documents pursuant to this section. Further, a juvenile case file,
18 any portion thereof, and information relating to the content of the
19 juvenile case file, may not be made as an attachment to any other
20 documents without the prior approval of the presiding judge of the
21 juvenile court, unless it is used in connection with and in the course
22 of a criminal investigation or a proceeding brought to declare a
23 person a dependent child or ward of the juvenile court.

24 (5) Individuals listed in subparagraphs (A), (B), (C), (D), (E),
25 (F), (H), and (I) of paragraph (1) may also receive copies of the
26 case file. In these circumstances, the requirements of paragraph
27 (4) shall continue to apply to the information received.

28 (b) (1) While the Legislature reaffirms its belief that juvenile
29 court records, in general, should be confidential, it is the intent of
30 the Legislature in enacting this subdivision to provide for a limited
31 exception to juvenile court record confidentiality to promote more
32 effective communication among juvenile courts, family courts,
33 law enforcement agencies, and schools to ensure the rehabilitation
34 of juvenile criminal offenders as well as to lessen the potential for
35 drug use, violence, other forms of delinquency, and child abuse.

36 (2) Notwithstanding subdivision (a), written notice that a minor
37 enrolled in a public school, kindergarten to grade 12, inclusive,
38 has been found by a court of competent jurisdiction to have
39 committed any felony or any misdemeanor involving curfew,
40 gambling, alcohol, drugs, tobacco products, carrying of weapons,

1 a sex offense listed in Section 290 of the Penal Code, assault or
2 battery, larceny, vandalism, or graffiti shall be provided by the
3 court, within seven days, to the superintendent of the school district
4 of attendance. Written notice shall include only the offense found
5 to have been committed by the minor and the disposition of the
6 minor's case. This notice shall be expeditiously transmitted by the
7 district superintendent to the principal at the school of attendance.
8 The principal shall expeditiously disseminate the information to
9 those counselors directly supervising or reporting on the behavior
10 or progress of the minor. In addition, the principal shall disseminate
11 the information to any teacher or administrator directly supervising
12 or reporting on the behavior or progress of the minor whom the
13 principal believes needs the information to work with the pupil in
14 an appropriate fashion, to avoid being needlessly vulnerable or to
15 protect other persons from needless vulnerability.

16 Any information received by a teacher, counselor, or
17 administrator under this subdivision shall be received in confidence
18 for the limited purpose of rehabilitating the minor and protecting
19 students and staff, and shall not be further disseminated by the
20 teacher, counselor, or administrator, except insofar as
21 communication with the juvenile, his or her parents or guardians,
22 law enforcement personnel, and the juvenile's probation officer
23 is necessary to effectuate the juvenile's rehabilitation or to protect
24 students and staff.

25 An intentional violation of the confidentiality provisions of this
26 paragraph is a misdemeanor punishable by a fine not to exceed
27 five hundred dollars (\$500).

28 (3) If a minor is removed from public school as a result of the
29 court's finding described in paragraph (2), the superintendent shall
30 maintain the information in a confidential file and shall defer
31 transmittal of the information received from the court until the
32 minor is returned to public school. If the minor is returned to a
33 school district other than the one from which the minor came, the
34 parole or probation officer having jurisdiction over the minor shall
35 so notify the superintendent of the last district of attendance, who
36 shall transmit the notice received from the court to the
37 superintendent of the new district of attendance.

38 (c) Each probation report filed with the court concerning a minor
39 whose record is subject to dissemination pursuant to subdivision
40 (b) shall include on the face sheet the school at which the minor

1 is currently enrolled. The county superintendent shall provide the
2 court with a listing of all of the schools within each school district,
3 within the county, along with the name and mailing address of
4 each district superintendent.

5 (d) Each notice sent by the court pursuant to subdivision (b)
6 shall be stamped with the instruction: “Unlawful Dissemination
7 Of This Information Is A Misdemeanor.” Any information received
8 from the court shall be kept in a separate confidential file at the
9 school of attendance and shall be transferred to the minor’s
10 subsequent schools of attendance and maintained until the minor
11 graduates from high school, is released from juvenile court
12 jurisdiction, or reaches 18 years of age, whichever occurs first.
13 After that time the confidential record shall be destroyed. At any
14 time after the date by which a record required to be destroyed by
15 this section should have been destroyed, the minor or his or her
16 parent or guardian shall have the right to make a written request
17 to the principal of the school that the minor’s school records be
18 reviewed to ensure that the record has been destroyed. Upon
19 completion of any requested review and no later than 30 days after
20 the request for the review was received, the principal or his or her
21 designee shall respond in writing to the written request and either
22 shall confirm that the record has been destroyed or, if the record
23 has not been destroyed, shall explain why destruction has not yet
24 occurred.

25 Except as provided in paragraph (2) of subdivision (b), no
26 liability shall attach to any person who transmits or fails to transmit
27 any notice or information required under subdivision (b).

28 (e) For purposes of this section, a “juvenile case file” means a
29 petition filed in any juvenile court proceeding, reports of the
30 probation officer, and all other documents filed in that case or
31 made available to the probation officer in making his or her report,
32 or to the judge, referee, or other hearing officer, and thereafter
33 retained by the probation officer, judge, referee, or other hearing
34 officer.